

### **REMARKS/ARGUMENTS**

This response is submitted in reply to the final Office Action dated June 24, 2008. Claims 47-50 and 66-75 currently stand rejected and are the only claims pending in the present application. Applicant respectfully traverses.

In light of the remarks presented below, Applicant respectfully requests reconsideration and allowance of all now-pending claims of the present application.

#### **Claim Rejections - 35 USC §102**

Claims 47-49 and 66-75 stand rejected under 35 U.S.C. §102(a) as being anticipated by Kroening et al. (U.S. Patent No. 6,080,207, hereinafter "Kroening").

Independent claims 47, 70, 72 and 74 each provide, *inter alia*, receiving a configuration upgrade message from a source of a software upgrade. In other words, the message relating to the upgrade is received from the device actually providing the upgrade.

The Response to Arguments section of the Office Action (pages 6-8) alleges that the transaction between the order entry BOM (15) and the image builder (20) "is considered as a type of configuration upgrade message". The Office Action then concludes that "the configuration server as the image builder server 20 receives the transaction or a type of configuration upgrade message from a source". Thus, the Office Action has apparently misconstrued the claimed invention by neglecting the fact that the configuration upgrade message of the claimed invention is received from a source of a software upgrade, and not just from a source in the abstract. To be sure, the order entry BOM is a source of messages for the image builder server. Moreover, the messages for which the order entry BOM is a source may arguably be considered as a type of configuration upgrade message. However, even if one assumes these allegations to be true, Kroening still fails to meet the claimed invention. In this regard, what is claimed is receiving a configuration upgrade message from a source of a software upgrade and not simply receiving a configuration upgrade message from any abstract source such as a source of the message.

Kroening is directed to a method for generating a custom configuration for a computer hard drive. The order entry BOM of Kroening is clearly disclosed as being the device into which

a customer's order is entered to establish a bill of materials (BOM). The BOM merely indicates the desired software configuration selected by the customer (col. 4, lines 8-12). The BOM is then used by the image builder to find a saved configuration or create one corresponding to the desired configuration indicated by the customer. As such, **the order entry BOM is not a source of the software upgrade**. Instead, the order entry BOM merely indicates what kind of upgrade is desired. The source of the upgrade is the image builder, which actually receives the BOM in Kroening. Accordingly, there is no configuration upgrade message received from a source of a software upgrade either taught or suggested in Kroening.

Notably, independent claims 49, 71, 73 and 75 do not state that the configuration upgrade message is received from a source of the software upgrade. Instead, independent claims 49, 71, 73 and 75 provide that the message is received from a service provider capable of providing an end service product. However, the order entry BOM does not provide an end service product. Quite to the contrary, the order entry BOM merely indicates parameters desired in an end service product. The end service product is provided by another device. As such, Kroening fails to teach or suggest that the message is received from a service provider capable of providing an end service product as provided in independent claims 49, 71, 73 and 75. Due to Kroening's failure to teach or suggest the features above, independent claims 45, 49 and 70-75 are neither anticipated nor obvious in view of Kroening.

The Response to Arguments section of the Office Action also alleges that Kroening discloses identifying a plurality of users having a contract requiring delivery of an end service product at col. 4, lines 4-8, col. 5, lines 5-52 and col. 6, lines 51-60. However, this additional feature is in no way taught or suggested in the cited passages or anywhere in Kroening. The cited passages deal with an image server pushing designated images down to clients via broadcast or MIS. The Office Action alleges that the clients assigned to receive the designated images are determined/identified within the broadcast transmission. However, even if one assumes this allegation to be completely correct, there is no teaching or suggestion in Kroening that the identification or determination of clients assigned to receive the designated images is made on the basis of identifying users having a contract requiring delivery of an end service product as provided in independent claims 49, 71, 73 and 75. Thus, Kroening's alleged

suggestion of determining or identifying recipients is in no way suggestive of determining or identifying recipients in any particular manner, much less identifying a plurality of users having a contract requiring delivery of an end service product as recited in independent claims 49, 71, 73 and 75.

Given that Kroening fails to teach or suggest identifying a plurality of users meeting the recited criteria above, Kroening also necessarily fails to teach or suggest providing product information relating to the end service product to respective servers associated with the plurality of users identified as having a contract requiring delivery of an end service product as recited in independent claims 49, 71, 73 and 75. Thus, for all the reasons stated above, Kroening fails to teach or suggest the features of the claimed invention.

Claims 48 and 66-69 each depend directly or indirectly from a respective one of independent claims 47 and 49 and therefore include all the recitations of their respective independent claims. Thus, dependent claims 48 and 66-69 are patentable for at least the same reasons given above for independent claims 47 and 49.

Accordingly, the rejections of claims 47-49 and 66-75 are overcome.

#### **Claim Rejections - 35 USC §103**

Claim 50 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Kroening in view of Kyle (U.S. Patent No. 6,141,681. However, Kyle fails to cure the above noted deficiencies of Kroening and is not cited as such.

Since Kroening and Kyle each fail to teach or suggest the above described features of independent claim 49, any combination of the cited references also fails to teach or suggest such features. Accordingly independent claim 49 is patentable over the cited references taken either individually or in combination. Claim 50 depends directly from independent claim 49 and thus includes all the recitations of independent claim 49. Therefore, dependent claim 50 is patentable for at least those reasons given above for independent claim 49.

Accordingly, Applicant respectfully submits that the rejection of claim 50 is overcome.

Appl. No.: 09/659,416  
Amdt. dated August 5, 2008  
Reply to Office Action of June 24, 2008

### **CONCLUSION**

In view of the remarks presented above, Applicant respectfully submits that the present application is in condition for allowance. As such, the issuance of a Notice of Allowance is therefore respectfully requested. In order to expedite the examination of the present application, the Examiner is encouraged to contact Applicants' undersigned attorney in order to resolve any remaining issues.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



Chad L. Thorson  
Registration No. 55,675

**Customer No. 00826**  
**ALSTON & BIRD LLP**  
Bank of America Plaza  
101 South Tryon Street, Suite 4000  
Charlotte, NC 28280-4000  
Tel Charlotte Office (704) 444-1000  
Fax Charlotte Office (704) 444-1111

**ELECTRONICALLY FILED USING THE EFS-WEB ELECTRONIC FILING SYSTEM OF THE UNITED STATES  
PATENT & TRADEMARK OFFICE ON August 5, 2008.**

LEGAL02/30888814v1